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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
(Docket No. CRD1061 CIP1) **FEB 11 2008**

In re the Application of:)	Customer No. 27717
)	
David Grewe et al.)	
)	Group Art Unit: 3736
Serial No.: 10/691,823)	
)	
Filed: October 23, 2003)	Examiner: J. Hoekstra
)	
For: Guidewire with Deflectable Tip)	
Having Torque Characteristics)	

TO: MAIL STOP: Appeal Brief-Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF

Dear Sir:

This is in reply to the Examiner's Answer mailed January 7, 2008.

I. THE EXAMINER'S ANSWER DOES NOT SUPPORT THE REJECTIONS

Pages 3-8 of the Examiner's Answer contain the Examiner's "Grounds of Rejection," which for the claims on appeal are identical to the "Claim Rejections" in the final rejection mailed April 3, 2007. There are no new grounds of rejection.

Appellant's main brief discusses why the Examiner's grounds of rejection are clearly erroneous and should be reversed. The Examiner has purported to respond to Appellant's arguments on pages 8-11 of the Examiner's Answer. These responses do not overcome Appellant's arguments. Specifically, with respect to the Examiner's responses, Appellant states as follows:

CH1 11410925.1

In paragraph 25 of the Examiner's Answer, the Examiner urges that the term "steerable guidewire" in Appellant's claims be disregarded and that any steerable catheter be considered to be a steerable guidewire. Without any basis, the Examiner states that a steerable catheter is capable of performing the functions of a steerable guidewire. As pointed out in Appellant's main brief, pages 6 to 7, catheters and guidewires are two completely distinct things. A guidewire has a closed distal end and is often used for removing an obstruction within a vessel, using the closed distal end of the guidewire. Hayzelden et al.'s catheter is nothing like this. In contrast, Hayzelden et al. concerns an ablation catheter having electrodes used to destroy certain heart tissue causing an arrhythmia, by applying RF energy to the conductive tissue. It could not possibly be used as a guidewire. Klima et al.'s catheter has an open distal end and could not and would never be used as a guidewire. It is typically used over a guidewire. Thus even using the broadest reasonable interpretation of "a steerable guidewire," the devices disclosed in Hayzelden et al. and Klima et al. do not comply because not only are they structurally different but they serve an entirely different purpose.

It is important to note that the term "steerable guidewire" does not appear merely in Appellant's claim preambles. In addition, in every independent claim the term "steerable guidewire" also appears within the body of the claim associated with structural recitations. It is a significant element of the claim which cannot be disregarded as the Examiner has done.

In paragraph 26 of the Examiner's Answer, the Examiner recognizes that Hayzelden et al. does not disclose "a flexible helical coil having multiple turns."

However, the Examiner takes the incorrect position that middle layer 82 of Hayzelden et al. is "structurally equivalent" to a "flexible helical coil having multiple turns." There is no basis for this contention. Middle layer 82 of Hayzelden et al. comprises braided ribbons, which are completely different in structure and function from a helical coil. While the Examiner continues to state that Hayzelden et al. discloses helical coils, this statement is clearly contrary to the disclosure of Hayzelden and is totally without merit.

All of Appellant's independent claims also require that the helical coil has a rectangular cross sectional configuration and has continuous undulations wherein the undulations of adjacent turns interlock with each other. Hayzelden et al. does not disclose this nor does the Examiner contend that Hayzelden et al. discloses this. All of Appellant's independent claims also state that the undulations take the form of a sinusoidal wave having positive and negative peaks, and the positive peaks of adjacent turns of coils engage negative peaks of adjacent turns. Hayzelden does not disclose any of this, nor does the Examiner contend that Hayzelden discloses this. However, the Examiner continues to argue that Klima et al. remedies these deficiencies by disclosing positive peaks of adjacent turns of coils engaging negative peaks of adjacent turns. The Examiner is incorrect. The positive peaks of adjacent turns of the coils of Klima et al. do not engage the negative peaks of adjacent turns. In sharp contrast, the adjacent "fingers" of Klima et al. are expressly separated by a serpentine slot 1084 (Figs. 14A-14B) which is filled with the material 90 that forms the outer jacket. Serpentine slot 1084 of Klima et al., which expressly separates the positive peaks of adjacent fingers from the negative peaks of adjacent fingers, is a significant aspect of Klima et al.'s

disclosure and is discussed in most detail in column 10, line 64 to column 11, line 21 of Klima et al. Not only does Klima et al. not teach positive peaks of adjacent turns of coil engaging negative peaks of adjacent turns, but instead Klima et al. very strongly teaches away from this claim limitation.

In his attempt to show that Klima's positive peaks of adjacent turns of coils engage negative peaks of adjacent turns, the Examiner refers to column 11, lines 26-30. While it is stated there that when torque is applied, the fingers from one support interlock with fingers from the adjacent support, as seen by the previous paragraph such interlocking occurs *while the separation between the adjacent supports is maintained*. Again, it is a significant feature of Klima et al. to have separation between the "fingers" 1077 and 1077', which is contrary to Appellant's claim limitation requiring engagement.

II. CONCLUSION

Appellant's claims to a novel steerable guidewire very clearly distinguish Appellant's invention from the combination of Hayzelden et al. and Klima et al. The Examiner has seriously misconstrued Hayzelden et al. and Klima et al. and has formed his rejection based upon such misconstruction and also based upon unsupported assertions which are highly improper. No matter how the references are attempted to be combined, they do not teach Appellant's invention as claimed. For the reasons set forth in Appellant's main brief and this Reply Brief, the Board is urged to reverse the Examiner's decision.

Respectfully submitted,

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I hereby certify that this correspondence is being sent Via Facsimile to the U.S. Patent and Trademark Office (Fax No. 571-273-8300) on Feb. 11, 2008.



Registered Attorney for Applicant
Date: Feb. 11, 2008